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SUPREME COURT U. S.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1920.

No. 608

MERCHANTS' LOAN & TRUST COMPANY, TRUSTEE OF THE ESTATE OF ARTHUR RYERSON, DECEASED,
Plaintiff in Error,

vs.

JULIUS SMIETANKA, FORMERLY UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS,
Defendant in Error.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION FOR REHEARING ON BEHALF OF PLAINTIFF IN ERROR.

ALBERT M. KALES,
Counsel for Plaintiff in Error.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

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Defendant in Error.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MAY IT PLEASE THE COURT:

At the end of the court's opinion in the above-entitled cause it is said "Another assessment on a small gain realized from a sale of bonds, also made by the trustee in 1917, does not present any questions other than those which we have discussed and therefore it does not call for separate consideration."

We respectfully call the court's attention to the fact that the bonds referred to were not "sold" but as the declaration states (Rec., 7) "were surrendered to the maker thereof upon call duly made." The profit on the bonds was not, therefore, realized by the voluntary act of the trustee in selling. It cannot be said that the trustee elected by its act to place itself in the position of a trader.

As the opinion now stands, it might be regarded as warranting a ruling that a profit in cash, no matter how acquired, would be "income," so that if property were taken for cash on condemnation income would result; or if property were insured for its increased value and were lost by fire or other casualty and the insurance money were paid, a profit in cash would result which would be taxable as income, and that whether the proceeds of the insurance were put into restoring or replacing the property lost or destroyed or not. Such a conclusion would be contrary in part at least to the ruling of the department referred to on our oral argument and cited as Regulations 45, Article 49.

We submit that the ruling as to the profit from the redemption of the bonds should be that no income has resulted, because there has been no sale or conversion as the voluntary act or election of the holder of the capital asset to realize a profit in cash.

On the principal point ruled in the opinion we join in a petition for rehearing which has been filed in the case of Eldorado Coal Mining Company against Harry W. Mager, Collector, being Case No. 609.

Respectfully submitted,

ALBERT M. KALES,

Counsel for Plaintiff in Error.

I hereby certify that in my opinion the foregoing petition for a rehearing is well founded in point of law.

ALBERT M. KALES,

Counsel for Plaintiff in Error.

DEC 4